

702: Representation for Legal Action

- A. For the SLTCOP to obtain representation:
 - 1. the Office shall advise the IDoA General Counsel of the legal action or threatened legal action; and
 - 2. the IDoA General Counsel shall follow the procedures of the IDoA to obtain representation for the SLTCOP by the Attorney General.
- B. When a conflict of interest exists under Chapter 900 of this Manual for the legal counsel being considered, the Department shall arrange for the provision of legal representation of the SLTCOP by an independent attorney. A conflict of interest may be identified by either the Attorney General, the IDoA Director, or the Office.
- C. For a LTCO or LTCOP to obtain legal representation:
 - 1. a LTCO shall immediately notify the Regional Ombudsman and the Office upon receipt of any complaint, summons, subpoena, lawsuit, injunction, or notice of any other legal action taken against the Regional LTCOP or any LTCO in connection with the performance of official duties. Such notice shall be provided within 24 hours, in writing, and is to include a copy of the legal document received with a brief case summary. Copies of the case notes and records shall be forwarded to the Office, upon request.
 - 2. the IDoA shall determine the appropriate response to the legal action and notify the Regional Ombudsman. If appropriate, the IDoA will submit a written request to the Office of the Attorney General for legal representation of the Regional LTCOP or LTCO, in accordance with "An Act to provide for representation

and indemnification in certain civil law suits", as amended. (5 ILCS 350/1 et seq., hereinafter referred to as the "representation and indemnification statute")

D. Determination by the Attorney General

1. Upon receiving a written request from the IDoA, should the Attorney General's office determine that the legal action being taken is founded on actions, decisions, or conduct undertaken by the Regional LTCOP or LTCO in good faith and within the scope of official duties, as defined in Chapter 200 of this Manual, the Attorney General's office will represent the subject of the legal action so long as such representation is without a prohibited conflict as defined in Chapter 900 of this Manual. The affected LTCO or LTCOP, by acceptance of this representation, agrees to fully cooperate with the Attorney General's office.
2. Upon receiving a written request from the IDoA, should the Attorney General's office decline to represent the agency or individual subject to the legal action or identifies a conflict, the LTCOP, provider agency, or LTCO may choose to obtain private counsel. The services of the private legal counsel:
 - a. will be reimbursed at reasonable rates approved by the Attorney General, as provided by the representation and indemnification statute, if the refusal by the Attorney General's office to represent the LTCOP, provider agency or LTCO is based on a conflict of interest between the Attorney General's office and the LTCOP.
 - b. may be reimbursed at reasonable rates approved by the Attorney General if the refusal is based on

a determination that the actions, decisions, or conduct which constitute the basis for the legal action were not taken in good faith and within the scope of official duties as defined in Chapter 200 of this Manual and if the actions, decisions, or conduct are determined in a final judgment by the court to have been undertaken in good faith and were within the scope of official duties.

3. No federal or state funds may be expended by a LTCOP, provider agency or LTCO for the reimbursement of private legal counsel where it is the final judgment of the court that the actions, decisions, or conduct which are the basis for the legal action for which the private legal counsel was employed were not undertaken in good faith or were outside the scope of official duties.

E. Liability from the Legal Action

1. If the Regional LTCOP or LTCO subject to the legal action is determined by a judgment of the court to be liable for damages for actions, decisions or conduct undertaken in good faith and within the scope of official duties, then the State of Illinois will indemnify the Regional LTCOP and LTCO pursuant to the representation and indemnification statute. Further, if the Attorney General's Office did not provide representation of the Regional LTCOP or LTCO subject to the legal action on the grounds that the action, decisions, or conduct at issue were not in good faith or not within the scope of official conduct, and a judgment of the court determines that such actions, while creating a liability for the Regional LTCOP or LTCO subject of the legal action, were within the scope of official duties and in good faith, then the Regional LTCOP or LTCO subject to the legal action may apply

to the IDoA for reimbursement of the expenses of legal representation, at a reasonable rate approved by the Attorney General.

2. If the Regional LTCOP, provider agency or LTCO subject to the legal action is determined to have a liability for action, decisions, or conduct not taken in good faith or within the scope of official duties, the IDoA will not approve the expenditure of public funds, either State or federal, for the indemnification of the Regional LTCOP, provider agency, or LTCO subject of the legal action.